

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

NIGILE R. MONTGOMERY

Case No. 3:09-cv-065

Petitioner,

-v-

**Judge Thomas M. Rose
Magistrate Judge Michael R. Merz**

TIMOTHY BRUNSMAN, Warden

Respondent.

**ENTRY AND ORDER ADOPTING THE MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATIONS IN ITS ENTIRETY (Doc. #2);
ADOPTING THE MAGISTRATE JUDGE'S SUPPLEMENTAL REPORT
AND RECOMMENDATIONS IN ITS ENTIRETY (Doc. #7);
OVERRULING MONTGOMERY'S OBJECTIONS TO THE REPORT
AND RECOMMENDATION (Doc. #6); OVERRULING MONTGOMERY'S
OBJECTIONS TO THE SUPPLEMENTAL REPORT AND
RECOMMENDATIONS (Doc. #9); DISMISSING MONTGOMERY'S
PETITION FOR A WRIT OF HABEAS CORPUS WITH PREJUDICE;
DENYING ANY REQUEST TO APPEAL IN FORMA PAUPERIS;
DENYING A CERTIFICATE OF APPEALABILITY AND TERMINATING
THIS CASE**

This matter comes before the Court pursuant to Petitioner Nigile R. Montgomery's ("Montgomery's") Objections to Magistrate Judge Michael R. Merz's Report and Recommendations (doc. #6) and Montgomery's Objections to Magistrate Judge Merz's Supplemental Report and Recommendations (doc. #9). The Report and Recommendations (doc. #2) was issued on February 20, 2009. On May, 15, 2009, Montgomery filed objections and the Warden did not file a response.

Magistrate Judge Merz then, on May 18, 2009, filed a Supplemental Report and Recommendations (doc. #7) to which Montgomery has objected (doc. #9). The time has run and the Warden has not filed a response. Montgomery's Objections to the Report and

Recommendations and the Supplemental Report and Recommendations are, therefore, ripe for decision.

The Report and Recommendations and Supplemental Report and Recommendations address Constitutional issues regarding Montgomery's sentencing. The Supplemental Report and Recommendations addresses issues raised in Montgomery's Objections to the Report and Recommendations.

In sum, Magistrate Judge Merz found that there was no Constitutional error and Montgomery's Petition should be denied. He also found that Montgomery should be denied any certificate of appealability and that Montgomery should not be permitted to proceed to appeal *in forma pauperis*.

As required by 28 U.S.C. §636(b) and Federal Rules of Civil Procedure Rule 72(b), the District Judge has made a de novo review of the record in this case and particularly of the matters raised in both of Montgomery's Objections. Upon said review, the Court finds that Montgomery's Objections to the Magistrate Judge's Report and Recommendations and Montgomery's Objections to the Magistrate Judge's Supplemental Report and Recommendations are not well taken and they are OVERRULED.

The Report and Recommendations and the Supplement Report and Recommendations are ADOPTED IN THEIR ENTIRETY. Montgomery's Petition for a Writ of Habeas Corpus is dismissed with prejudice. Further, Montgomery is denied any requested certificate of appealability and any appeal should not be permitted to proceed *in forma pauperis*. Finally, the captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

DONE and **ORDERED** in Dayton, Ohio, this Twenty-Third day of July, 2009.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record